

LEGISLATIVE GUIDE TO IOWA LOCAL GOVERNMENT INITIATIVE AND REFERENDUM



Note to Reader:

Research is conducted by the Legal Services Division of the Legislative Services Agency in an objective and nonpartisan manner. Although a Legislative Guide may identify issues for consideration by the General Assembly, nothing contained in a Guide should be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

About the Author:

Susan Crowley, J.D., University of Iowa, 1988, is a Senior Legal Counsel with the Legal Services Division of the Legislative Services Agency. Ms. Crowley has been employed by the Agency since 1990. Ms. Crowley staffs the Ways and Means and Local Government Committees and drafts legislation in the areas of taxation, elections, and local government.

Ms. Crowley can be reached by telephone at (515) 281-3430 or by e-mail at:
susan.crowley@legis.state.ia.us.

TABLE OF CONTENTS

I. Introduction.....	1
II. Background Information.....	1
A. Initiative and Referendum.....	1
B. Legislative Powers of Local Governments.....	2
1. Iowa Home Rule Amendments	2
2. Iowa Local Government Charters	3
III. City of Clinton v. Sheridan	3
A. Factual Background	3
B. Iowa Supreme Court Ruling.....	4
1. Constitutional Analysis	4
2. Election Law Prohibition	4
C. Attorney General Opinions	5
IV. Analyses Relating to Action of the Legislature.....	6
A. Constitutional and Statutory Analysis	6
B. Legislative Implications	6

Iowa Local Government Initiative and Referendum



I. Introduction.

In recent years questions have arisen concerning the ability of local governments governed by a charter, particularly cities, to provide their citizens with initiative or referendum power. This Legislative Guide reviews municipal corporation law in general, and current Iowa case law and statutes on this issue and focuses on the most recent Iowa Supreme Court ruling on this matter -- *City of Clinton v. Sheridan*.¹

Iowa has no state constitutional provision which allows for the exercise of statewide initiative and referendum powers and the Legislature has no power to allow the statewide electorate to legislate directly by popular vote.² However, the fact that the State does not have the authority to allow initiative and referendum on state legislation does not mean that local governments may not extend local initiative and referendum power to their citizens. In *City of Clinton*, the Iowa Supreme Court has held that because the Iowa Constitution bestows home rule authority on cities and because state statute does not expressly forbid local initiative and referendum, it is permissible for a city that has adopted a charter for its governance to extend the power of initiative and referendum to its electors.³

References to the Iowa Code in this Legislative Guide are to the 2001 Iowa Code.

II. Background Information.

A. Initiative and Referendum.

The initiative power has been generally defined as "the process by which the people propose laws by petition for enactment or rejection at the polls"⁴ and "[the] power of the people to propose bills and laws, and to enact or reject them at the polls, independent of legislative assembly."⁵ The referendum power is defined as "the right of the people to have an act passed by the legislative body submitted for their approval or rejection"⁶ or "the process of referring to the electorate for approval . . . of a law passed by the legislature."⁷ In other words, the referendum "provides a mechanism for the electorate to approve or reject legislation that has already been approved by the legislature."⁸

¹City of Clinton v. Sheridan, 530 N.W.2d 690 (Iowa 1995). This Legislative Guide uses the term "local governments" to refer to both cities and counties. *City of Clinton* does not address the question of whether counties have express or implied authority to grant initiative and referendum to their citizens. However, based on the language of the county home rule amendment and the language in the County Code of Iowa charter provisions--both of which mirror the city provisions--it is reasonable to conclude that the reasoning used by the *City of Clinton* court would apply to a county charter as well.

²Santo v. State, 2 Iowa 165, 203 (Clarke 1855).

³City of Clinton at 694.

⁴Eugene McQuillin, *The Law of Municipal Corporations*, vol. 5, § 16.52 (3d ed. 1989 and 1995 Cumulative Supplement).

⁵Black's Law Dictionary, p. 705 (5th ed. 1979).

⁶McQuillin, § 16.53.

⁷Black's Law Dictionary at 1152.

⁸Iowa Legislative Service Bureau, "Initiative and Referendum: The Role of Direct Democracy" (1978).



Iowa Local Government Initiative and Referendum

B. Legislative Powers of Local Governments.

The power of a local government to enact ordinances is restricted to the exercise of those legislative powers delegated to it, either expressly or by implication, by the constitution, charter, or statute.⁹

1. Iowa Home Rule Amendments.

The home rule amendments of the Iowa Constitution give cities and counties authority to determine their own local affairs and government in a manner which is not inconsistent with state statute, except that home rule power and authority does not extend to the authority to levy a tax without the express authorization of the General Assembly.¹⁰ An ordinance is inconsistent with the state statute when the ordinance prohibits an act permitted by a statute or permits an act prohibited by a statute.¹¹ An ordinance is also inconsistent with state statute when it invades an area of law reserved by the legislature to itself.¹² For example, the Iowa General Assembly has reserved to itself enactment of laws regulating the conduct of insurance companies operating within the state. Therefore, a local government in Iowa does not have the authority to adopt ordinances, by any means, regulating insurance companies operating within the borders of the locality.

The city and county home rule amendments were ratified by the voters in 1968 and 1978, respectively, to counter the Dillon Rule. The Dillon Rule is derived from an 1868 Iowa Supreme Court ruling which stated that local governments "owe[d] their origin to, and derive[d] their power and rights wholly from, the legislature," and could exercise only those powers expressly granted by the state and powers incident to or necessarily implied by that express grant.¹³

a. City Home Rule Amendment. The city home rule amendment, the twenty-fifth amendment to the Iowa Constitution, reads as follows:

Municipal home rule. Sec. 38A. Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.

*The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.*¹⁴

b. County Home Rule. The county home rule amendment, the thirty-seventh amendment to the Iowa Constitution, reads as follows:

Counties home rule. Sec. 39A. Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the

⁹McQuillin, § 16.08.

¹⁰Iowa Const. Art. III, §§ 38A and 39A.

¹¹City of Council Bluffs v. Cain, 342 N.W.2d 810, 812 (Iowa 1983).

¹²Id. at 812.

¹³City of Clinton v. Cedar Rapids & Missouri River R.R. Co., 24 Iowa 455, 475 (1868).

¹⁴Iowa Const. Art. III, § 38A.

Iowa Local Government Initiative and Referendum



general assembly. The general assembly may provide for the creation and dissolution of joint county-municipal corporation governments. The general assembly may provide for the establishment of charters in county or joint-municipal corporation governments.

If the power or authority of a county conflicts with the power and authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction.

The proposition or rule of law that a county or joint county-municipal corporation government possesses and can exercise only those powers granted in express words is not a part of the law of this state.¹⁵

2. Iowa Local Government Charters.

A local government charter is similar in concept to a state constitution, i.e., it sets forth the manner in which the citizens of the locality will be governed. The authority to govern by charter may be granted either by state constitution or state statute.¹⁶ Iowa law recognizes six forms of city government, including that established pursuant to a home rule charter.¹⁷ Iowa Code provisions relating to county government also permit governance by charter, along with other forms of government.¹⁸ The Iowa Code also contains statutory provisions relating to procedures for adoption of city and county home rule charters, contents of the charters, and amendments to the charters.¹⁹ Currently, no counties in Iowa have adopted a charter form of government. Four Iowa cities -- Clinton, Fort Dodge, Iowa City, and Marion -- operate their city governments pursuant to a home rule charter. Clinton's charter is the only one that allows citizens initiative and referendum authority.

III. City of Clinton v. Sheridan.

A. Factual Background.

In *City of Clinton*, the City of Clinton had adopted a home rule charter which included a provision allowing the citizens of Clinton the power of initiative and referendum. When the city council attempted to submit to a vote of the people certain ordinances adopted by the council, the county auditor refused to submit the referendum issue to a vote. The city petitioned the district court, asking the court to declare the initiative and referendum provisions constitutional and not inconsistent with state law and to require the county auditor to submit the referendum issue to the voters.²⁰ The district court ruled against the City. On appeal to the Iowa Supreme Court, that decision was reversed.²¹

¹⁵Iowa Const. Art. III, § 39A.

¹⁶McQuillin, § 16.49.

¹⁷Iowa Code § 372.1.

¹⁸Iowa Code § 331.231.

¹⁹Iowa Code §§ 372.3, 372.9, 372.10, 331.238, and 331.246.

²⁰City of Clinton at 691.

²¹Id. at 691.



Iowa Local Government Initiative and Referendum

B. Iowa Supreme Court Ruling.

1. Constitutional Analysis.

The Iowa Supreme Court ruled that, although the Iowa Code mandates that the city council is the governing body of a city, it is not inconsistent for the home rule charter of a city to permit ordinances passed by initiative and referendum vote because state statute does not include an express prohibition against a home rule charter providing for initiative and referendum voting sufficient to override the constitutional home rule amendment.²² "If the general assembly intended to preempt municipal initiative and referendum powers, it could have done so by express and unambiguous statutory language."²³

The Court stated that not only does the home rule amendment require specific statutory prohibition, but the Iowa Code was amended to broaden the provision relating to the contents of a city home rule charter by removing language restrictive of the contents of charters.²⁴ Section 372.10 of the Iowa Code, part of the 1972 Home Rule Act enacted by the General Assembly, had provided as follows:

372.10 CONTENTS OF CHARTER. A home rule charter must contain and is limited to provisions for:

- 1. A council of an odd number of members not less than five.*
- 2. A mayor, who may be one of those council members.*
- 3. Two-year or staggered four-year terms of office for the mayor and council members.*
- 4. The powers and duties of the mayor and the council, consistent with the provisions of the city code.*

The words "and is limited to" were repealed in 1975.²⁵ The court averred that, "[t]he obvious purpose of this deletion was to allow the home rule charters to include the broad powers to determine local affairs and government as provided by the constitutional amendment."²⁶

2. Election Law Prohibition.

The Court also entertained arguments that the initiative and referendum provisions of Clinton's home rule charter were illegal because neither was an election authorized by state law. The Court responded by saying that the preemption by the General Assembly of statutes pertaining to the conduct of elections in the state and the fact that the conduct of initiative and referendum elections is not specifically addressed in the Iowa Code does not mean such elections are not legal.²⁷ Indeed, McQuillin's Law of Municipal Corporations states that conduct of these elections is governed by the charter unless it has been addressed by state statute.

²²Id. at 694.

²³Id. at 695.

²⁴Id. at 694.

²⁵1975 Iowa Acts ch. 203, § 22.

²⁶City of Clinton at 694.

²⁷Id. at 695.

Iowa Local Government Initiative and Referendum



... [I]nitiative and referendum procedure is commonly governed by charter provisions or statutes which may be applicable only where there is no charter provision or to the extent that the procedure established by charter is incomplete."²⁸

Two Iowa Supreme Court justices joined in a dissent to the *City of Clinton* ruling. The dissent agreed that the city home rule amendment allows cities to exercise powers not inconsistent with state law. However, the dissent notes, Iowa Code section 364.3, subsection 1, places an express limitation on the power of a city by requiring that the council must exercise a power "only by the passage of a motion, a resolution, an amendment, or an ordinance." It is the dissent's view that there is neither a provision in the Iowa Code nor a ruling in prior case law that overrides this limitation.²⁹

C. Attorney General Opinions.

In its ruling in *City of Clinton*, the Court considered, and rejected, opinions issued by the Attorney General which addressed the constitutional question and the election law prohibition issue.³⁰ In several published opinions, the Iowa Attorney General has opined that local governments may only authorize the presentation of questions to voters of matters that are specifically required or authorized by law to be placed before the electorate.³¹ Furthermore, some of those opinions have stated that since a charter provision authorizing initiative and referendum is inconsistent with state law, the commissioner of elections (county auditor) is authorized to refuse to conduct such an election.³²

Although the Attorney General concedes that a charter may contain provisions in addition to those set forth in Iowa Code section 372.10, "[however,] whatever is placed in such a charter cannot contradict or be in conflict with the constitution or a statute."³³ "In two prior opinions of this office we have held that the type of election the charter proposes is not allowed by law, and that home rule does not give cities such authority."³⁴ "[W]e can find no provision in the city code, nor in the election laws allowing this type of election. Accordingly, a charter may not include these kind of provisions."³⁵

A subsequent opinion confirmed this view:

[W]e conclude that political subdivisions may only authorize the presenting of questions to voters on matters that are specifically required or authorized to be placed before the electorate by statute or by Constitution. . . . The commissioner of elections does not have the authority to conduct an illegal or unauthorized election, and, therefore has the authority

²⁸McQuillin, § 16.59.

²⁹City of Clinton at 695.

³⁰The opinions of the Attorney General cited in this Legislative Guide address only the authority of cities to grant initiative and referendum powers to its citizens. One opinion, 1995 Op. Iowa Att'y Gen. (11/22/95), concluded that counties, too, lacked this authority. However, that opinion concerned a county which had not adopted a charter form of government, but which had nonetheless attempted to submit by referendum certain questions to its electorate.

³¹1992 Op. Iowa Att'y Gen. 169 (10/2/92); 1976 Op. Iowa Att'y Gen. 681 (7/30/76); 1972 Op. Iowa Att'y Gen. 263 (10/15/71); 1972 Op. Iowa Att'y Gen. 520 (7/20/72).

³²1992 Op. Iowa Att'y Gen. 169 (10/2/92); 1976 Op. Iowa Att'y Gen. 681 (7/30/76).

³³1976 Op. Iowa Att'y Gen. 681 at 683 (7/30/76).

³⁴Id. at 682. See also 1972 Ops. Iowa Att'y Gen. 263 and 520.

³⁵1976 Op. Iowa Att'y Gen. 682.



Iowa Local Government Initiative and Referendum

*to refuse to conduct an election if the election is not specifically authorized or required by statute or by the Constitution.*³⁶

The Court in *City of Clinton*, of course, rejected the legal conclusions expressed in these opinions:

*"To require specific statutory authority to permit an initiative or referendum vote is contrary to the intent of the [state's constitutional home rule] amendment that rejected the Dillon rule. Cities no longer have only those powers granted by the legislature."*³⁷

IV. Analyses Relating to Action of the Legislature.

A. Constitutional and Statutory Analysis.

The ruling in *City of Clinton* is consistent with a more general view of the law on initiative and referendum authority of local governments as expressed in McQuillin's Law of Municipal Corporations and cited throughout this Legislative Guide. McQuillin's also states that, "[however,] any grant of the power of initiative and referendum and its exercise are subject to, and must be consistent with, governing constitutional and statutory provisions."³⁸ The Court in *City of Clinton* noted that a city which granted its electorate initiative and referendum power via a home rule charter is not in contravention of a statute placing legislative authority solely in the city council because Iowa Code section 372.10 allows cities broad discretion pertaining to the contents of a city home rule charter and that same statute does not expressly prohibit the grant of initiative and referendum power. And, as the Court in *City of Clinton*, a constitutional provision which allows the legislature to override certain exercises of the constitutional power cannot be overridden other than by express and unambiguous statutory provisions.³⁹

The Attorney General argues that preemption by state statute of local election law procedure implies that constitutional home rule authority is overridden simply because the procedure for implementation of a constitutionally-based power, i.e., initiative and referendum elections, has not been addressed by state statute.⁴⁰ The Court deduced that this argument for preemption of local election law provisions is a case of the tail wagging the dog because the argument, in effect, advocates that a constitutional provision, the municipal home rule amendment, can be overridden and its effect negated by statutory omission of the procedure to implement the provision. The integrity of a constitutional provision conferring broad home rule authority to local governments cannot be challenged by mere statutory implication nor by statutory omission.

B. Legislative Implications.

In accordance with the Iowa Supreme Court history, cities, by means of a home rule charter authorized in Iowa Code section 372.3, may grant to their citizens initiative and referendum power. A strong argument can be made that counties, too, have this authority by virtue of the county home rule amendment of the Iowa Constitution and statutory

³⁶1992 Op. Iowa Att'y Gen. 169, 170-71 (10/2/92).

³⁷City of Clinton v. Sheridan at 695.

³⁸McQuillin, § 16.50.

³⁹City of Clinton v. Sheridan at 695.

⁴⁰1992 Op. Iowa Att'y Gen. 169 (10/2/92).

Iowa Local Government Initiative and Referendum



provisions relating to charters and the legislative powers of the boards of supervisors which are similar in scope to the current statutory provisions relating to cities and city councils. However, to grant to cities and counties the authority to allow initiative and referendum by their citizens without the necessity of adopting a home rule charter would require the enactment of legislation.

Regardless of whether the authority to grant initiative and referendum powers is allowed only to cities and counties governed by charters or to cities and counties generally, the grant of initiative and referendum power has limitations inherent in any intergovernmental grant of power. Initiative and referendum power is limited to legislation within the power of the local government to enact. "The electorate has no greater power to legislate than the municipality [local government] itself. An invalid ordinance is defective no matter which body attempts to enact it."⁴¹ Likewise, an ordinance is not subject to referendum if its adoption is required by state law.⁴² In other words, an ordinance required to implement a state mandate is not subject to referendum.

0418RR

⁴¹McQuillin, § 16.52.

⁴²Id. at § 16.54.